

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO  
ALBUQUERQUE DIVISION**

**DILLARD STORE SERVICES, INC.,**

**Plaintiff,**

**Civil Action No. 1:22-cv-921-DHU-JFR**

**v.**

**WINROCK PARTNERS LLC  
and INTEGRATED PROPERTY  
SERVICES COMPANY d/b/a  
GOODMAN REALTY GROUP,**

**Defendants.**

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR PRETRIAL  
CONFERENCE PURSUANT TO FED. R. CIV. P. 16(a)**

Defendants, Winrock Partners LLC ("Winrock") and Integrated Property Services Company d/b/a Goodman Realty Group ("Goodman") (collectively, "Defendants"), respectfully submit the following in response and opposition to Plaintiff's Motion for Pretrial Conference (ECF No. 29.):

1. On March 15, 2023, this Court issued, *sua sponte*, an order delaying entry of a scheduling order (ECF No. 16) pending resolution of Defendants' motion to dismiss Plaintiff's Complaint (ECF Nos. 10-11); principally on grounds that Plaintiff's Complaint is time-barred. This Court did so on grounds "the Court finds good cause to delay entering a scheduling order at this time pending resolution of this motion. The Court will enter an initial scheduling order, if necessary, when this motion is resolved." (ECF No. 16.)
2. On March 27, 2023, with Defendants' Motion to Dismiss pending, Plaintiff filed a First Amended Complaint ("FAC"),<sup>1</sup> which made minor amendments to Plaintiff's Original Complaint, but which does not alter the time-barred nature of Plaintiff's claims for the reasons set forth in Defendants' second Motion to Dismiss the FAC.

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<sup>1</sup> See ECF No. 18.

(ECF Nos. 27-28.)

3. Although Plaintiff asserts, in its Motion for a Pretrial Conference, that Defendants' pending Motion to Dismiss "is neither novel nor unique and does not provide an adequate basis to delay this case from commencing for what would be more than a year from filing,"<sup>2</sup> Defendants believe good cause *still* exists for this Court's March 15, 2023, Order delaying entry of a scheduling order pending resolution of Defendants' motion to dismiss Plaintiff's FAC, and that the same cause exists given Defendants' motion to dismiss the FAC.
4. Defendants do not believe any relevant documents are likely be lost or destroyed between March 15, 2023, and the issuance of a scheduling order that were not already lost or destroyed between the September 2016, accrual of Plaintiff's asserted claims and the date of this Court's March 15, 2023, order. Moreover, Defendants will, of course, continue to preserve all relevant, or seemingly relevant information within their possession and/or control pending the final termination of this action, as is their obligation already.
5. For the foregoing reasons, and because Defendants contend there existed no merit for filing Plaintiff's Original Complaint or FAC, Defendants oppose Plaintiff's Motion for a Pretrial Conference at this time.

Dated: January 8, 2024

Respectfully submitted,

*s/s Michael W. Vivoli*

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<sup>2</sup> See Doc. No. 29 at ¶ 9.

WALKER & ASSOCIATES, P.C.

By: /s/ filed electronically

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*Local Counsel for Defendants*

### **Certificate of Service**

I, Chris W. Pierce, hereby certify that on January 8, 2024, a true copy of the foregoing was served via the Court's CM/ECF notification facilities to those parties who are registered CM/ECF participants in this case.

/s/ Chris W. Pierce

Chris W. Pierce